

BOARD OF PESTICIDES CONTROL

September 8, 2004

Embassy Room, Senator Inn & Spa Inn
284 Western Avenue, Augusta

AGENDA/MINUTES

9:30 A.M.

The regular monthly meeting was called to order at 9:35 A.M. by Chair Carol Eckert. Other members in attendance were Berry, Humphreys, Jemison and Walton. Bradstreet and Simonds were unable to attend.

1. Introductions of Board and Staff

- ☒ The members and staff introduced themselves.

2. Minutes of the July 21, 2004 Board Meeting

Action Needed: Amend and/or Approve

- ☒ Berry/Walton: Motion made and seconded to approve the minutes as distributed.

In Favor: Unanimous

3. Review of Northern New England Poison Center Data

Since June 1993, the Board's staff has worked in cooperation with the Northern New England Poison Center (PC), formerly Maine Poison Center, in an effort to characterize pesticide exposure and information calls to the PC. The objective of this project is to identify the types of pesticide products that are causing acute exposure to the citizens of Maine, and to develop educational strategies for reducing these exposures. The staff has prepared a Power Point presentation summarizing the data that includes information on human exposure both in Maine and at the national level.

Presentation By: Lebelle R. Hicks, PhD, D.A.B.T.
Pesticides Toxicologist

Action Needed: None, informational only.

- ☒ Hicks described the history of poison center data collection in Maine and pointed out the 5,510 calls over a ten-year period relate to potential acute effects rather than chronic effects. As expected, there is a seasonal trend for calls to increase during the summer months and insecticides account for 50.5% of the calls. In recent years, the synthetic pyrethrins have replaced the organophosphates as the insecticides with the most inquiries. She also noted that during this period 928 calls were for information only and suggested these calls should be coming to the Board. One inhibiting factor is the Poison Center has

a toll free telephone number and the Board does not. Eckert thanked Hicks for the presentation and asked her to continue reviewing the data as a step toward establishing a pesticide medical surveillance system for documenting health problems caused by exposure to pesticides.

4. Review of Rule-Making Record for Proposed New Chapter 26 - Standards for Pesticide Applications and Notification for All Occupied Buildings Except K-12 Schools

A public hearing was held on July 21st where two people spoke in support of the rule, four people spoke in opposition and two expressed concerns over specific provisions. The comment period closed August 13th with 17 people supporting adoption of the rule and 29 expressing opposition. Some of the most common complaints were that the Board did not involve stakeholders in the development of the rule, the ban on preventive spraying would result in serious contamination problems, the 24-hour notice was not warranted and would greatly increase operating costs, and the requirement to remove people before making applications would be extremely difficult for facilities that operate 24 hours a day, seven days a week. The staff has prepared a summary of comments and concluded that that several substantive revisions to the rule will be needed. The staff also believes that it would not be productive to continue this rule-making effort until an educational program on IPM techniques can be provided to the many affected businesses that have expressed their concerns over the current proposal.

Presentation By: Robert I. Batteese, Jr.
Director

Action Needed: Discussion of comments and decision on how the Board wishes to develop a revised proposal.

- ☒ Eckert led the discussion noting that while there had been a fair number of people in favor of the proposed rule there were an even larger number opposed. She did not think it was necessary to start totally over or establish a consensus-based rule development committee. Humphreys agreed and stated she found the information submitted by the staff quite helpful. Walton indicated he would not have a problem with a consensus group while Jemison suggested looking separately at each of the segments including restaurants and nursing homes. Berry asked about comments that the rule should be major substantive, and Randlett responded that the Board's rules are routine technical. Randlett also explained that if the Board wanted more input it could abandon the current proposal and either form a consensus-based rule development committee or hold public information gathering meetings with the various groups. In the latter situation, there would be public notice and the staff would gather information and prepare a new proposed rule.

Walton/Jemison: Motion made and seconded to reject the current rule-making proposal and start gathering information from the various groups to be affected by a proposed rule.

In Favor: Unanimous

Batteese asked the members to identify the groups that should be invited to participate in the next few Board meetings. There was consensus that health care and corrections

people should be invited to the October meeting with food processing, restaurant and hotel operators asked to come to the November meeting. Other groups identified by the Board or audience members to be invited to future meetings included retail food, convenience and pharmacy stores; daycare facilities; state agency and university researchers and people with multiple chemical sensitivity.

5. Consideration of Staff Negotiated Consent Agreement with Pro-Turf of Saco

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involves the commercial application of pesticides during a period in 2003 when the firm had failed to renew its master applicator and spray contracting firm licenses. These actions constitute violations of the Board's licensing statutes and regulations.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings reported this case resulted from an inadvertent failure by the applicator to renew both his personal and business licenses.

Walton/Berry: Motion made and seconded to approve the consent agreement negotiated by the staff.

In Favor: Unanimous

6. Consideration of Staff Negotiated Consent Agreement with Emerald Farms of Caribou

This case is similar to the preceding agenda topic where there was no dispute of material facts and law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. It involves the application of a pesticide to a broccoli field when winds were between 17 to 19 miles per hour. This action constitutes a violation of the Board's Chapter 22 regulation prohibiting the outdoor application of pesticides by powered application equipment when wind speeds exceed 15 miles per hour.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings noted that it is usually difficult to prove violations of the maximum wind speed but in this case the inspector witnessed the application and measured the speed with his own meter.

Berry/Jemison: Motion made and seconded to approve the consent agreement negotiated by the staff.

In Favor: Unanimous

7. Consideration of Staff Negotiated Consent Agreement with Scotts Lawn Service of Scarborough

This case is also similar to the preceding agenda topic where there was no dispute of material facts and law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. It involves the mistaken application of an herbicide to three different properties where the owners had not requested and did not wish to receive lawncare service. These actions constitute a violation of the Board's statute dealing with the use of pesticides in a careless, negligent or faulty manner.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings explained he decided on the suspended fine in an effort to balance the seriousness of treating three wrong addresses with a desire to not discourage applicators from self-reporting their violations.

Humphreys/Walton: Motion made and seconded to approve the consent agreement negotiated by the staff.

In Favor: Unanimous

8. Consideration of Staff Negotiated Consent Agreement with The Cottage Greenhouse of Greenville

This case is similar to the preceding agenda topic where there was no dispute of material facts and law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. It involves the application of pesticides inside a greenhouse during 2002 and 2003 and failing to maintain pesticide application records. This action constitutes a violation of the Board's Chapter 50 regulation requiring commercial agricultural producers to maintain written records of all their pesticide applications for a period of two years.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

Jennings indicated this was a small operation but it was still important for them to keep application records.

Berry/Walton: Motion made and seconded to approve the consent agreement negotiated by the staff.

In Favor: Unanimous

9. Other Old or New Business

- a. Update on Pesticide Container Recycling - R. Batteese
 - ☒ Batteese advised that he was expecting to receive a letter from ACRC stating they would pay the shipping costs to transport containers from central and southern Maine to the Northern Maine Tri-Community Recycling Center in Frenchville.
- b. Letter from Mary McAvoy of Patten Describing How Chapter 41 has Adversely Affected Her Use of Aquashade – R. Batteese
 - ☒ Batteese called the member's attention to the August 26th letter from Mary McAvoy of Patten who had to expend \$200.00 more to have an applicator apply Aquashade to her ornamental pond than it cost her in the past to make the simple application herself. Jemison reported receiving at least three calls per week throughout the summer from persons who wanted to apply dyes to their private ponds. He asked if it would be possible to get officials from DEP to address this issue. Fish indicated the current restrictions were an economic problem for persons raising fish, and Jennings pointed out it would not be feasible for persons to purchase enough dye to put in a public body of water. Berry observed that he had never added chemicals to his own pond but that he would support an exemption for dyes. Eckert asked Hicks to look into assembling the Environmental Risk Advisory Committee to address this issue and report back at the next meeting
- c. Meeting with Commissioner Spear on Financial Matters – R. Batteese
 - ☒ Batteese reminded the members of the meeting with Commissioner Spear scheduled for 10:00 A.M. on Friday, September 10th. He reported he would not be available that day but asked if they wanted to review the budget issues with Jennings in advance of the meeting with the Commissioner. There was agreement that all who could make it should convene in Room 319 of the Deering Building at 9:30 A.M. on Friday.
- d. Other ???
 - ☒ Walton asked what the staff had found in their inspection of the browned out vegetation in Fayette. Jennings reported that some of the brush had been cut in the past year and some had been cut in the previous year. He indicated that there was insufficient evidence to document a violation.

10. Schedule and Location of Future Meetings

a. Location and date for the next meeting.

☒ The Board scheduled the next meeting for Friday, October 8th in Augusta

b. Location and date for the following meeting.

☒ The Board scheduled the following meeting for Friday, November 5th in Augusta.

11. Adjourn

☒ A motion to adjourn was accepted at 12:42 P.M.

Robert I. Batteese, Jr.
Director